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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JIM PAUL HAUGHWOUT

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Appeal 2009-000708  
Application 09/819,899  
Technology Center 3600

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Decided:<sup>1</sup> July 14, 2009

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Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
ANTON W. FETTING, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

An oral hearing was held on July 8, 2009.

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## STATEMENT OF THE CASE

Jim Paul Haughwout (Appellant) seeks our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 90, 94, 96, 97, 107, 111, 112, 120, 124, 125, and 133-153. Claims 1-89, 91-93, 95, 98-106, 108-110, 113-119, 121-123, and 126-132 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF DECISION

We REVERSE.<sup>2</sup>

## THE INVENTION

The invention “relates to selecting a sales pitch for a telephone caller.” Specification 1:4.

The subject matter claimed involves processes (independent claims 90, 133, and 136, and claims 94, 96, 97, and 151 dependent on claim 90, and claims 137-150 dependent on claim 136); systems (independent claims 107 and 134, and claims 111, 112, and 152 dependent on claim 107), and computer programs stored on computer readable mediums (independent claims 120 and 135, and claims 124, 125, and 153 dependent on claim 120).

Claim 90, reproduced below, is illustrative of the subject matter on appeal.

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<sup>2</sup> Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed Sep. 24, 2007) and Reply Brief (“Reply Br.,” filed Feb. 13, 2008), and the Examiner’s Answer (“Answer,” mailed Dec. 13, 2007).

90. A process for assisting presentation of sales pitches appropriate for a particular telephone caller of a customer service call center, the process comprising:

- receiving and handling at a customer service call center an incoming service call from a caller seeking assistance; and
- leveraging the incoming service call for assistance as a conduit for soliciting the caller to purchase merchandise or services, the leveraging including:
  - identifying a caller identity or a first caller attribute related to the caller,
  - storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches,
  - searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute,
  - omitting to search a second electronic database of potential sales pitches for a sales pitch based upon at least the additional attribute of the caller, and
  - routing the service call to a human operator.

## THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Szlam	US 5,511,112	Apr. 23, 1996
Dhir	US 6,553,113 B1	Apr. 22, 2003
Kanevsky	US 6,665,644 B1	Dec. 16, 2003

The following rejections are before us for review:

1. Claims 90, 94, 96, 97, 107, 111, 112, 120, 124, 125, and 136-153 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir and Kanevsky.

2. Claims 133-135 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Dhir, Kanevsky, and Szlam.

## ARGUMENTS

With respect to claim 90, the Appellant argues that

Dhir and Kanevsky, either alone or in combination, fail to describe or suggest at least “storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches” (emphasis added), as recited in claim 90.

App. Br. 9.

The Examiner disagrees. According to the Examiner, “Dhir discloses the “storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute” (Answer 13), citing col. 1, ll. 8-12 (Answer 13) and col. 7, ll. 54-67; col. 8, ll. 1-26; and, col. 9, ll. 51-58 (Answer 4). According to the Examiner, Kanevsky teaches “a preference of the caller not to receive any sales pitch.” Answer 15.

With respect to claim 136, the Appellant argues that

Dhir and Kanevsky, either alone or in combination, fail to describe or suggest at least “storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller, the sales pitch preference comprising a preference of the caller not to receive a sales pitch related to a first service or product

and not to receive any sales pitches related to a provider of the first service or product” (emphasis added), as recited in claim 136.

App. Br. 12.

The Examiner disagrees. According to the Examiner, “Dhir discloses ‘storing a sales pitch preference in a first electronic database to be used as an additional attribute of the caller.’” Answer 18. According to the Examiner,

Kanevsky further teaches an attribute data which is stored in the data warehouse which correlates with at least one user attribute (col. 2, lines 21-23). The attribute can include the gender of the user, accent of the user, native language of the user, socioeconomic classification of the user, dialect of the user, educational level of the user, and the emotional state of the user (col. 3, lines 55-59) .... Emotional categories can include hot anger, cold anger, panic, fear ... (col. 5, lines 1-4).

Answer 18.

With respect to claim 133, the Appellant argues that

Dhir, Kanevsky, and Szlam, either alone or in the proposed combination, fail to describe or suggest at least “a call routing code segment that causes the computer to bypass the second database code segment and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller’s account” (emphasis added), as recited in claim 133.

App. Br. 14-15.

The Examiner disagrees. “Dhir was cited for the call routing code segment .... Kanevsky was cited for routing the call to a human operator based on the identified information indicative of the past misbehavior.”

Answer 20. And,

Szlam was then cited for teaching the past misbehavior which includes information that the caller has violated a terms of service agreement associated [with] the caller’s account. In col. 8, lines 20-26, Szlam teaches the customer account number and past misbehavior a late payment account and a delinquent account. Such late payment and delinquent account are considered past misbehavior of violating a term of service agreement associated with the caller’s account.

Answer 21-22.

## ISSUES

Would one of ordinary skill in the art at the time of the invention have arrived at the claimed subject matter given Dhir and Kanevsky’s disclosure of a system “to tailor response of a voice system to an acoustically determined state of a voice system user” (Kanevsky, col. 1, ll. 10-12), including the “emotional state of the user” (Kanevsky, col. 3, l. 59) such as “hot anger, cold anger, panic fear, anxiety, sadness, elation, despair, happiness, interest, boredom, shame, contempt, confusion, disgust and pride” (Kanevsky, col. 5, ll. 1-4)?

## PRINCIPLES OF LAW

### *Obviousness*

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

*KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 17-18.

## ANALYSIS

*The rejection of claims 90, 94, 96, 97, 107, 111, 112, 120, 124, 125, 136-153 under 35 U.S.C. § 103(a) as being unpatentable over Dhir and Kanevsky.*

*Claims 90, 107, and 120, and their dependent claims (i.e., claims 94, 96, 97, 151; claims 111, 112, 152; and, claims 124, 125, 153, respectively).*

The issue is whether the cited references disclose or would lead one of ordinary skill in the art to the subject matter claimed in independent claims 90 (to a method), 107 (to a system), and 120 (to a computer program stored



on computer readable medium). Each of these claims include a limitation to storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches. In claim 90, this limitation is expressed as a step preceding steps of “searching the first electronic database to determine the additional attribute of the caller based on at least one of the caller identity or the first caller attribute” and “omitting to search a second electronic database of potential sales pitches for a sales pitch based upon at least the additional attribute of the caller.” In claim 107, this limitation is expressed as a function of the configuration of a first electronic database, to which is tied a search component “configured to identify in the first electronic database the attribute related to the caller based on the caller identity and configured to omit searching a second electronic database of potential sales pitches for a sales pitch based on the attribute.” Claim 120 expresses this limitation in terms of the function for a code segment, following the language of claim 107.

Accordingly, all the claims 90, 94, 96, 97, 107, 111, 112, 120, 124, 125, 151, 152, and 153 provide for a first electronic database to include, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches. Thus, in order to establish a prima facie case of obviousness for the claimed subject matter, the cited prior art must show or lead one of ordinary skill in the art to a method, system, and a computer program stored on computer readable medium, as claimed such that a first electronic database includes, prior to the receipt of the incoming

service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches. *Cf. Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318, 1324 (Fed. Cir. 2008) (“The first issue we address with respect to obviousness is the scope and content of the prior art—specifically whether the prior art exhibited every step of the methods claimed in independent claims 1 and 31 of the ’099 patent.”).

We have reviewed the cited references but do not find disclosed therein a first electronic database that includes, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute, comprising a preference of the caller not to receive any sales pitches. The Examiner states that “Dhir discloses the ‘storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute’” (Answer 13) and cites col. 1, ll. 8-12; col. 7, ll. 54-67; col. 8, ll. 1-26; and, col. 9, ll. 51-58. Col. 1, ll. 8-12 of Dhir reads as follows:

The present invention relates generally to a system and method for routing phone calls in a service center that integrates telephony with computers to provide a positive and personalized service environment that increases caller recognition provides cross-selling benefits through proactive servicing and spreads cost by supporting partners associated with the call center provider.

Col. 7, ll. 54-67, reads as follows:

IVR transaction data module 225 may comprise a module containing transaction data from the IVR banks (see, e.g., FIG. 1, IVR system1 125 and IVR system2 120). In the preferred embodiment of the present invention, so-

called centralized IVR's are employed within the call routing system network to secure additional data from a caller before routing to an individual call site. In this fashion, additional information may be secured from the caller so that the proper account is recognized and strategic decisioning logic and load balancing logic can be employed to route the call to the best target. This reduces unnecessary site interflow and post-routing that plagues conventional systems. IVR transaction data module 225 generally includes data collected from a caller when routed to an IVR, which may prompt the caller to select various options and enter touch-tone digits via menu selection.

Col. 8, ll. 1-26, reads as follows:

Routing codes data module 235 comprises a data module with routing codes associated with particular accounts that correspond to particular routing strategies. For example, routing codes data module 235 may comprise routing codes that indicate that the customer for Account Number 123456 should receive proactive servicing for balance transfers or Internet services. As a result, when that customer calls the virtual call center and his/her account is recognized, routing codes data module 235 will be checked to ascertain whether this customer has been pre-designated for particular servicing. In one embodiment, the routing codes are derived by periodic processing of some combination of profile data from module 215 and/or account data from module 220. This periodic processing to create routing codes may be automated or may entail human intervention.

Strategies module 230 generally contains the logic or scripts for the routing strategies. Scripts refer to the language or set of commands employed

by central server system 100 to determine a target site and/or target queue for a given call. In one embodiment, said scripts include logic for strategic decisioning (identifying candidate target queues for a given call) and load balancing (balancing the load across available resources). In the preferred embodiment, strategies module 230 contains the strategies corresponding to routing codes stored in routing codes data module 235.

Col. 9, ll. 51-58, reads as follows:

By incorporating shared IVR systems within the call routing network (e.g., modules 120 and 125) before a call is forwarded to a local call site, additional information can be received so that it is more likely that the correct account is recognized and the proper routing strategy is computed. The effect is that the so-called hit-rate (% of calls properly routed) increases dramatically, costs are reduced, and revenues and customer satisfaction are improved.

We have reviewed these passages but do not see clearly where in these passages, as the Examiner states, “Dhir discloses the ‘storing in a first electronic database, prior to the receipt of the incoming service call from the caller, a sales pitch preference of the caller, as an additional attribute’” (Answer 13).

Moreover, notwithstanding whether Dhir does or does not disclose storing a caller’s *sales pitch preference*, Dhir does not disclose storing a sales pitch preference “comprising a preference of the caller not to receive any sales pitches” as claimed. This is conceded by the Examiner (Answer

4). Kanevsky is relied upon for this limitation. The Examiner relies upon “Kanevsky to teach a preference of the caller not to receive any sales pitch.” Answer 15.

We have reviewed Kanevsky but have been unable to find support for the Examiner’s assertion that “Kanevsky [*teaches*] a preference of the caller not to receive any sales pitch.” Answer 15. *See also* Answer 5. The Examiner points to the abstract; col. 4, l. 66-col. 5, l. 4; col. 5, ll. 32-35; and, col. 7, ll. 46-54. Answer 5. The abstract; col. 4, l. 66-col. 5, l. 4; and, col. 5, ll. 32-35, describe a system tailored to the state, including the emotional state, of a voice system user. Col. 7, ll. 46-54, reads as follows:

Those of skill in the art are aware of appropriate formats for data which is to be mined, as set forth in the two cited reference books. Business objectives can include, for example, detection of users who are vulnerable to a proposal to buy a given product or service, detection of users who have problems with the automated system and should be transferred to an operator and detection of users who are angry at the service and should be transferred to a supervisory person.

We do not see in these passages any teaching of a preference of the caller not to receive any sales pitch as the Examiner has asserted.

The reasoning the Examiner has used to lead the Examiner from what Kanevsky actually describes - detection of acoustic features - to the conclusion that Kanevsky teaches a preference of the caller not to receive any sales pitch implies that the Examiner believes a preference of the caller not to receive any sales pitch is inherent to the detection of an acoustic feature corresponding to a negative emotional state. The problem with that reasoning is that it does not necessarily follow that a detection of an acoustic

feature corresponding to a negative emotional state means the caller does not prefer to receive any sales pitch. We agree with the Appellant that

[t]he user's projection of mood or difficulty in dealing with the system is different from detecting users who have a preference not to receive any sales pitches *because* a preference of the caller not to receive any sales pitches necessarily requires that the caller choose or otherwise select not to receive any sales pitches.

App. Br. 10. Neither Dhir nor Kanevsky disclose or suggest making such a selection.

Accordingly, we find a prima facie case of obviousness has not been established for the claimed subject matter over the cited prior art.

*Claim 136 and dependent claims 137-150.*

We reach the same conclusion as to these claims. A prima facie case of obviousness has not been established for the claimed subject matter over the cited prior art.

The issue here is whether the cited references disclose or would lead one of ordinary skill in the art to the subject matter claimed in independent process claim 136 which includes a limitation to storing in a first electronic database, as an additional attribute, not only a preference of the caller not to receive any sales pitches but, furthermore, “not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product.” Given our conclusion *supra* that Kanevsky does not support the Examiner's assertion that it “[teaches] a preference of the caller not to receive any sales pitch” (Answer

15) it also does not support “teach[ing] a preference of the caller not to receive a sales pitch related to a first service or product and not to receive any sales pitches related to a provider of the first service or product” as the Examiner has argued. *See Answer 8.*

*The rejection of claims 133-135 under 35 U.S.C. § 103(a) as being unpatentable over Dhir, Kanevsky, and Szlam.*

We reach the same conclusion as to these claims. A prima facie case of obviousness has not been established for the claimed subject matter over the cited prior art.

The issue here is whether the cited references disclose or would lead one of ordinary skill in the art to the subject matter claimed in process claim 133, system claim 134, and computer program stored on a computer readable medium claim 135, all of which include a limitation to storing in a first electronic database, prior to receipt of the incoming service call, “information indicative of past misbehavior of the caller.” This information includes information that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller’s account. This information is then used to bypass a sales pitch selection process; e.g., regarding the computer readable medium claim 135, there is included

a call routing code segment that causes the computer to bypass the second database code segment [which is configured to cause the computer to identify a first sales pitch preference] and to route the service call to a human operator based on the identified information indicative of past misbehavior, wherein the identified information indicative of past misbehavior includes information that the caller has acted

illegally or that the caller has violated a terms of service agreement associated with the caller's account.

According to the Examiner, "Kanevsky was cited for routing the call to a human operator based on the identified information indicative of the past misbehavior." Answer 20. We are unable to find support for this. The Examiner mentions that Kanevsky discloses "a user who is angry at the service should be transferred to a supervisory person (col. 7, lines 52-54)." Answer 21. While this is an accurate characterization of what Kanevsky discloses at col. 7, ll. 52-54, it does not necessarily follow that transferring a caller to a supervisor because the caller is angry is indicative of past misbehavior including that the caller has acted illegally or that the caller has violated a terms of service agreement associated with the caller's account.

### CONCLUSIONS

We conclude that the Appellant has shown that the Examiner erred in rejecting claims 90, 94, 96, 97, 107, 111, 112, 120, 124, 125, and 136-153 under 35 U.S.C. § 103(a) as being unpatentable over Dhir and Kanevsky; and, claims 133-135 under 35 U.S.C. § 103(a) as being unpatentable over Dhir, Kanevsky, and Szlam.

### DECISION

The decision of the Examiner to reject claims 90, 94, 96, 97, 107, 111, 112, 120, 124, 125, and 133-153 is reversed.

### REVERSED



Appeal 2009-000708  
Application 09/819,899

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